

Conspiracy in violation of 18 USC§1962(d), Mail Fraud Conspiracy in violation of  
indictment alleging Racketeering in violation of 18USC§1962(c), Racketeering  
brought before the United States District Court and charged with a fourteen count  
On May 22, 2013 Mr. Mackenzie was taken into custody by federal agents

## PROCEDURAL HISTORY

MacKenzie requests that a sentence of imprisonment of forty eight months be imposed in  
set forth in 18 U.S.C. § 3553(a). Accordingly, for the reasons set forth herein, Mr.  
months is sufficient, but not greater than necessary, to serve the objectives of sentencing  
U.S.C. § 3553(a). Specifically, Mr. MacKenzie submits that a sentence of forty eight  
AGR is greater than necessary to serve the objectives of sentencing set forth in 18  
range (hereinafter "AGR") is necessary and appropriate because Mr. MacKenzie's  
Mr. MacKenzie submits that a departure and/or variance from the advisory guideline  
to serve the objectives of sentencing set forth in 18 U.S.C. § 3553(a). Specifically,  
the Court in fashioning a sentence that is "sufficient, but not greater than necessary,"  
Defendant, Edward MacKenzie, submits this sentencing memorandum to assist

this case.

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### DEFENDANT EDWARD MACKENZIE'S SENTENCING MEMORANDUM AND REQUEST FOR A DOWNWARD DEPARTURE OR VARIANCE

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EDWARD MACKENZIE

v.

UNITED STATES OF AMERICA

CR. NO. 2013-CR-10149-FDS

Mr. Mackenzie was married in 1984 the marriage endured for four years and he has two daughters from that relationship Lauren and Courtney Mackenzie. He maintains a close relationship with his daughters and they are supportive of him throughout this litigation. Mr. Mackenzie also has two daughters Kaya and Devyn Mackenzie resulting from his relationship with Kathleen Puglisi. Ms. Puglisi suffered from chronic substance abuse

Mr. Mackenzie has had no meaningful contact with either of his biological parents throughout his entire life. He has two brothers that both reside in Massachusetts as noted throughout this sentence report he has maintained a close relationship with his brother Ronald.

Mr. Mackenzie is fifty seven years of age. As noted in the pre-sentence report Mr. Mackenzie's parents abandoned the family when he was four years of age. He was raised in foster homes thereafter where he was the recipient of constant abuse and neglect at the hands of his state sponsored caretakers. He was the victim of various physical, sexual and emotional abuses throughout his entire upbringing. He repeatedly fled the various foster homes he was placed with until age thirteen or fourteen when he began living in the streets seeking shelter where ever he was able. At age seventeen he enlisted in the military service and was honorably discharged after approximately one year.

## PERSONAL HISTORY AND CHARACTERISTICS OF MR. MACKENZIE

On October 21, 2014 this Honorable Court conducted a Rule 11 hearing on the fourteen count indictment, the Government moved to dismiss all counts of the indictment alleging extortion and the Court accepted the defendant's plea of guilty to all indictment counts of the indictment.

Fraud in violation of 18 USC § 1343. On May 28, 2013 a detention hearing was held before the Honorable Magistrate Bowler and the defendant has been in custody since his

to Mr. Mackenzie in 1998. Ms. Puglisi tragically passed away in 2012 due to an apparent self-administered drug overdose.

Probation has calculated Mr. Mackenzie's AGR are between ninety seven months and one hundred and twenty one months attributing him with a criminal history category of III. The Government has moved for an upward departure from the recommended AGR and asks the Court to impose a sentence of one hundred forty four months. The Government's rational for this unwarranted upward departure is in large part based on the book Street Soldier that was authored by Phyllis Karsas in conjunction with Mr. Mackenzie and asks the Court to impose a sentence of one hundred forty four months. The book Street Soldier that was authored by Phyllis Karsas in conjunction with Mr. Mackenzie editing. In essence Mackenzie sold the rights to the author and publisher to write this conduct is a lifetime in the past and since that era Mr. Mackenzie has earned his Bachelor degree from the University of Massachusetts, engaged in numerous efforts and programs to assist and guide disadvantaged urban youths from the pitfalls of a life of crime. Attached as exhibits to this memorandum are citations awarded to Mr. Mackenzie to this end by both houses of the Massachusetts state legislature as well as former Governor Mitt Romney and others.

As set forth in the PSR, the Probation Department (hereinafter "Probation") calculated Mr. Mackenzie's AGR to be 97 to 121 months. See PSR, ¶ 209. Probation calculated his Total Offense Level (hereinafter "TOL") by first computing the Base Offense Level (hereinafter "BOL") under the guideline found in U.S.S.G. §2B4.1(b)(1)(G); §2E1.1, §2S1.1, §2B1.1 as 31 including enhancements for specific loss amount and offense characteristics. Finally, Probation applied a three-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a) and § Case 1:13-cr-10149 Document 106 Filed 03/05/15 Page 3 of 3

## ADVISORY SENTENCING GUIDELINE RANGE

Probation further calculated Mr. Mackenzie's criminal history score to be a 4 based on convictions for larceny, workman's compensation fraud and one conviction for conspiracy to distribute cocaine. The most recent offense having taken place in 2001 some fourteen years ago.

In our constitutional system, the power to define penalties for federal crimes belongs to the legislative branch of government. *United States v. Evans*, 333 U.S. 483, 486, 68 S.Ct. 634, 92 L.Ed. 823 (1948). However, federal courts possess the discretion to tailor individual sentences within the boundaries set by the statutory framework, to tailor limitations imposed by Congress. See *Mistretta v. United States*, 488 U.S. 361, 364, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989).

Matters of policy typically are for Congress. See, e.g., *Plumley v. S. Containier*, 303 F.3d 364, 374 (1st Cir.2002) (explaining that "it is Congress' mission to set the policy of positive law," whereas a court's role is "to interpret that law"). A corollary to this principle is that, in the absence of constitutional infirmity, federal courts are bound by Congress' policy judgments, including judgments concerning the appropriate penalties for federal crimes.

The creation of the Sentencing Commission and the inauguration of a guideline scheme were valid exercises of congressional authority to fix penalties for federal crimes and, concomitantly, to cabin judicial discretion. See *id.* at 412. However, Congress' authority in this area is not unbounded. In *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), the Supreme Court identified a constitutional infirmity in the sentencing guidelines guidelines. *Id.* at 245. The *Booker* Court held that mandatory sentencing enhancements imposed by Congress violate the Fifth Amendment's Double Jeopardy Clause.

## 1. REQUEST FOR A DEPARTURE AND/OR VARIANCE.

1199 (11<sup>th</sup> Cir. 2003); *United States v. Clark*, 8 F.3d 839, 843 (D.C.Cir. 1993).  
Bowers, 941 F.2d 1019, 1026 (10<sup>th</sup> Cir. 1991); *United States v. Adams*, 316 F.3d 1196,  
1991); *United States v. Reyes*, 8 F.3d 1379, 1387 (9<sup>th</sup> Cir. 1993); *United States v.*  
F.3d 835, 837 (3<sup>rd</sup> Cir. 1994); *United States v. Pickney*, 938 F.2d 519, 521 (4<sup>th</sup> Cir.  
1996); *States v. Mayes*, 332 F.3d 34, 36 (1<sup>st</sup> Cir. 2003); *United States v. Shoupe*, 35  
Cir. 1996). See U.S.S.G. § 4A1.3; see also *United States v. Lindaia*, 82 F.3d 1154, 1165 (1<sup>st</sup>  
crimes. The defendant's criminal history category or offense level significantly over-represents the seriousness of  
the defendant's criminal record or the likelihood that the defendant will commit further  
U.S.S.G. § 4A1.3 permits this Court to depart downward when a defendant's

A Departure Or Variance Is Warranted Where Mr. Mackenzie's Criminal  
History Category Significantly Over-represents The Seriousness Of His  
Criminal Record And His Likelihood Of Recidivism.  
will ultimately undermine the sentencing purposes set forth in § 3553(a).  
submits that the imposition of a sentence greater than theAGR as calculated by probation  
81, 113, 116 S.Ct. 2035, 135 L.Ed.2d 392 (1996). In the present case, Mr. Mackenzie  
38, 52, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007) quoting *Koon v. United States*, 518 U.S.  
sometimes magnify, the crime and punishment to ensue." *Gall v. United States*, 552 U.S.  
and every case as a unique study in the human failings that sometimes mitigate,  
In each case, a sentencing court should "consider every convicted person as an individual  
*Kimbrough v. United States*, 52 U.S. 85, 111, 128 S.Ct. 558, 169 L.Ed.2d 481 (2007).  
Of course, the ultimate question in every case is whether a sentence is reasonable.  
individual sentencing decisions.

Booker and its progeny, District Courts now possess greater flexibility in reaching  
the sentencing guidelines bidding on the federal courts. *Id.* at 246-46. As a result of  
amend. VI). To cure this infirmity, the Court excised the statutory provision that made  
derogation of the constitutionally assured right to trial by jury. *Id.* (citing U.S. Const.

Accordingly, a departure or variance to a CHC II is warranted in this case.

Indeed, since turning 43 years of age, his criminal record is unremarkable. 2001. Particularly true given the fact that Mr. Mackenzie's most recent conviction was in A CHC III substantially overstates Mr. Mackenzie's risk of recidivism. This is

for a conspiracy to distribute cocaine conviction in 1990.

compensation fraud conviction, one point for a 2001 larceny over \$250.00 and one point conviction of larceny over \$250.00. One additional point for a 2001 workman's Category III with four criminal history points. One point was assigned for the 1993 As noted above, Probation has determined that Mr. Mackenzie is in Criminal History

see also *United States v. Leveine*, 31 F.Supp.2d 23, 32 (D.Mass. 1998).

the proximity in time of prior offenses, to name a few. See *Hammond*, *supra* at 877-880; of prior sentences, the circumstances of the defendant's life at the time of the priors and of the priors, drug and alcohol abuse, the circumstances of the prior offenses, the length available to the Court, the age of the prior offenses as well as of the defendant at the time similar category offenders, the nature of this offender relative to other information pursuant to § 4A1.3 is warranted: the likelihood of recidivism, comparison of other There are a number of factors courts have used in determining whether a departure

*Hammond*, 240 F. Supp.2d 872, 877 (E.D. Wis., 2003).

“Every defendant is different and must be considered as an individual.” *United States v.*

*States v. Willerson*, 183 F.Supp.2d 373, 380 (D. Mass. 2002). Pursuant to § 4A1.3, court to put the defendant's record in the context of his life and background. *United recidivism. See Id.; see also U.S.S.G. § 4A1.3. As such, § 4A1.3 departures permit a seriousness of the defendant's past criminal conduct or the likelihood of defendant's that the defendant's criminal history category or offense level misrepresents the defendant's criminal history category or offense level if reliable information indicates*

problems which could be made worse by incarceration.

probation and home detention to a 76-year old defendant with medical (in bankruptcy fraud, downward departure from range of 27-33 months to a departure); U.S. v. Baron, 914 F. Supp. 660, 662-665 (D. Mass. 1995) conditions — even though court of appeals said it would not have granted defendant convicted of mail fraud and had life-threatening health of 51-63 months to probation with 6 months in home confinement where (eighth Cir. 1998) (affirmed downward departure for 70-year old from range issues were a basis for a departure. See U.S. v. Hildebrand, 152 F.3d 756

12. Prior to Booher, a defendant's advanced age and complicated medical

Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines at a recidivism rate of just 9.5%. See United States Sentencing Commission, Measuring Recidivism rate of the defendant pursuant to 18 U.S.C. § 3553(a)(2)(C). Indeed, among all offenders under age 21, the recidivism rate is 35.5 percent, while offenders over the age of 50 have who are forty and older, which lessens the need to protect the public from further crimes It is well established that the risk of recidivism drops dramatically in defendants Mr. Mackenzie's, Low Risk of Recidivism Upon Release Is Justification For a Variance.

variance in this case.

old. Accordingly, his age is another reason for the Court to depart and/or grant a he receives all of his good time, he would not be released until he is almost 64 years approximately 7 years) assuming he earns all his good time credits. Thus, even if Probation (91 months) means that he will have to serve approximately 81 months (or Mr. Mackenzie is 57 years old. Using the low end of theAGR calculated by sentence. Id.

factors, like the extent of a variance, have some bearing on the reasonableness of a advisory--are no longer decisive as to factors any more than as to results. Rather, these court is weighing the statutory factors apart from the guidelines. The guidelines forbidden factor under the guidelines does not automatically make it irrelevant when a . Smith, 445 F.3d 1, 3 (1st Cir. 2006), the First Circuit held that a discouraged or a defendant is elderly and infirm. See U.S.S.G. § 5H1.1. Moreover, in United States

Mr. Mackenzie is now 57 years old and it is clear that his risk of recidivism will decline with each passing year. Moreover, he submits that for purposes of a departure or variance, these above factors should be considered in isolation and in combination.

The positive correlation between age and recidivism is impossible to deny. Indeed, as shown above, the Sentencing Commission in its report did not even bother to separate statistics on recidivism rates of inmates who are, for example, age 55 at the time of sentence (or age 57 like Nellum). One can only reasonably assume that the trend of decreasing recidivism continues downward after the age of 50. *Id.* at \*3.

In *Nellum*, the Court noted:

to deter Nellum and others from committing further crime under § 3553(a)(2).  
was 168-210 months, sentence of 108 months because court also had to consider the need defendant convicted of distributing crack-cocaine; and his guideline sentencing range age. See *U.S. v. Nellum*, 2005 WL 300073 (N.D. Ind. Feb. 3, 2005) (where 57-year old Moreover, one Court specifically noted that recidivism drops substantially with not be more severe than that necessary to satisfy the goals of punishment.”).

that the goal of rehabilitation “cannot be served if a defendant can look forward to nothing beyond imprisonment. Hope is the necessary condition of mankind, for we are all created in the image of God. A judge should be hesitant before sentencing so severely that he destroys all hope and takes away all possibility of useful life. Punishment should not be more severe than that necessary to satisfy the goals of punishment.”).  
(S.D.N.Y. Feb. 22, 2005) (in drug case, career offender guideline of 262 months too great where defendant will be 48 when he emerges from prison and the Court noted that the goal of rehabilitation “cannot be served if a defendant can look forward to nothing beyond imprisonment. Hope is the necessary condition of mankind, for we are all created in the image of God. A judge should be hesitant before sentencing so severely that he destroys all hope and takes away all possibility of useful life. Punishment should not be more severe than that necessary to satisfy the goals of punishment.”).  
probability that *Carmena-Rodriguez will recidivate*”; *U.S. v. Carvajal*, 2005 WL 476125 (S.D.N.Y. April 11, 2005) (where 55 year old woman pled guilty to distribution of drugs sentence of 30 months (below guideline range) proper in part “in view of the low (S.D.N.Y. April 11, 2005) (where 55 year old woman pled guilty to distribution of drugs

environment. In short, he did not grow up in a secure, nurturing and supportive development. One does not have to be a psychologist or psychiatrist to understand the detrimental and permanent impact these circumstances had on Mr. MacKenzie's

system and living on the streets in abject poverty. Well known for its lengthy history of abuse and neglect ultimately fleeing that abhorrent Mr. MacKenzie was abandoned by both of his parents, was raised in a foster home system as a youth is not only present, it is extraordinary in the sense that since the age of 4, some bearing on the reasonableness of a sentence. Id. In this case, the lack of guidance U.S.S.G. § 5H1.12. However, this factor, to the extent it is relevant to a variance, has are usually not relevant grounds for determining whether a departure is warranted. See of guidance as a youth and similar circumstances indicating a disadvantaged upbringing

variance, has some bearing on the reasonableness of a sentence. Smith, supra at 3. Lack In Smith, the First Circuit held that a forbidden factor, like the extent of a

Consideration Of A Forbidden Factor Provides Further Support For The Reasonableness Of A Forty Eight Month Sentence In This Case.

It is clear that such a sentence was determined by Congress to be sufficient to reflect the seriousness of the offense; to promote respect for the law, and to protect the public from further crimes of the defendant. Punishment for the offense; to afford adequate deterrence to criminal conduct; and to

Imposing a sentence of forty eight months is sufficient in this case.

SENTENCING IN 18 U.S.C. § 3553(a)  
GREATER THAN NECESSARY TO SERVE THE PURPOSES OF  
A FORTY EIGHT MONTH SENTENCE IS SUFFICIENT BUT NOT

serve the purposes of sentencing set forth in 18 U.S.C. § 3553(a). imprisonment because said sentence is sufficient, but not greater than necessary, to counsel, respectfully requests the Court to impose a forty eight month sentence of For all the foregoing reasons, Edward MacKenzie, by and through undersigned

### III. CONCLUSION.

MacKenzie's debt to society in this case. future criminal conduct. Finally, a forty eight sentence is more than adequate to pay Mr. said sentence, will adequately deter Mr. MacKenzie and others similarly situated from promote respect for the law, and will provide just punishment for the offense. Also, year old man will reflect the seriousness of the offenses involved in this case, will Specifically, imposing a forty eight month sentence of imprisonment on this 57

comply with these sentencing purposes. months sentence of imprisonment is "sufficient, but not greater than necessary," to times by the defendant. 18 U.S.C. § 3553(a)(2)(B)-(C). Mr. MacKenzie submits that a afford adequate deterrence to criminal conduct and protect the public from further punishment for the offense. 18 U.S.C. § 3553(a)(2)(A). Any sentence must also reflect the seriousness of the offense, promote respect for the law, and provide just Pursuant to 18 U.S.C. § 3553(a)(2), any sentence imposed by the Court must

Punishment For The Offenses. Seriousness Of The Offense, Promote Respect For The Law, And Provide Just A Forty Eight Month Sentence Of Imprisonment Will Reflect The

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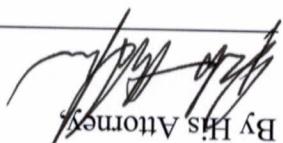
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By His Attorney

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Respectfully Submitted,